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Co-Counsel for Debtors and

Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**DEBTORS' APPLICATION IN LIEU OF MOTION IN SUPPORT OF
ENTRY OF STIPULATION AND CONSENT ORDER APPROVING
LEASE TERMINATION AGREEMENT
WITH LG-BBB, LLC**

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

TO: THE HONORABLE JUDGE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned co-counsel, Cole Schotz P.C., and Kirkland & Ellis LLP and Kirkland & Ellis International LLP, respectfully state the following in support of this application (the “Application”), pursuant to D.N.J. LBR 9021-1(b), seeking the approval and entry of the proposed *Stipulation and Consent Order Approving Lease Termination Agreement with LG-BBB, LLC* (the “Proposed Stipulation”),² a copy of which is attached hereto as Exhibit 1, and respectfully state as follows:

1. On April 23, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 24, 2023, the Court entered an order [Docket No. 75] authorizing procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). On May 5, 2023, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 218].
2. As of the Petition Date, LG-BBB, LLC (“Landlord”) and one of the Debtors were parties to an unexpired lease of nonresidential real property (the “Lease”) for retail store space at 2045 Smith Haven Plaza in Lake Grove, NY (the “Premises”).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Proposed Stipulation.

3. Following the Petition Date, the Debtors and Landlord negotiated and entered into a Lease Termination Agreement, the form of which is annexed as Exhibit "A" to the Proposed Stipulation (the "Lease Termination Agreement"). Among other things, the Lease Termination Agreement, provides as follows:³

- (a) upon the Termination Date (defined in the Lease Termination Agreement to be as of July 31, 2023), the Lease shall be rejected and terminated, and all of the Debtors' interest therein and in the Premises shall be transferred to Landlord;
 - (b) as consideration for the rejection and termination of the Lease, Landlord shall pay to Tenant \$474,507.50 -- representing the agreed upon Lease Termination Fee of \$500,000 less the Remaining Post-petition Rent -- upon the Termination Date, subject to satisfaction of the conditions precedent listed in paragraph 7 of the Landlord Termination Agreement (defined in the Lease Termination Agreement, as the "Lease Termination Payment"). If the payments (i) represented by the June 2023 Rent Check or (ii) scheduled to be paid on July 1, 2023 for \$60,966.25 are not made as of the Termination Date, Landlord shall be entitled to deduct such amounts not paid from the Lease Termination Payment.
 - (c) Landlord and Debtors agree to mutually release and waive claims against the other, except that, to the extent necessary to seek indemnification under any applicable liability insurance policy of Debtor tenant, Landlord does not release any claims for indemnification under the Lease arising from any third-party claims that may be asserted against Landlord for occurrences prior to the Termination Date; and
 - (d) for the abandonment of any FF&E or other personal property in the Premises as of the Termination Date to Landlord, including the solar array system installed on the roof of the Premises.
4. Landlord and the Debtors (collectively, the "Parties") desire to have the Lease Termination Agreement approved as soon as possible and have entered into the Proposed Stipulation to obtain the Court's approval thereof.

³ The terms described in this paragraph are for illustrative purposes only. To the extent there is any inconsistency between the terms set forth in the Lease Termination Agreement and the terms described herein, the Lease Termination Agreement shall control in all respects.

5. The Debtors submit that the Proposed Stipulation is in the best interest of the Debtors and their estates.
6. This Application is submitted pursuant to D.N.J. LBR 9021-1 (b) in lieu of a motion in support of the Debtors' request that the Court enter the Proposed Stipulation as presented.
7. No previous application for the relief sought herein has been made to this or any other Court.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Stipulation, in substantially the form submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: July 7, 2023

/s/ Michael D. Sirota

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